LIBRARY
SUPREME COURT, U. S.
Supreme Court, U.S.
FILED
MAR 11 1971
E. R.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~5750~~ 70-5014

PETER STANLEY, SR.,

Appellant,

—v.—

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF OF CENTER ON SOCIAL WELFARE POLICY AND LAW, *AMICUS CURIAE*

JONATHAN WEISS
E. JUDSON JENNINGS
TOBY GOLICK
Center on Social Welfare
Policy and Law
401 West 117th Street
New York, New York 10027.
Attorneys for Center on Social Welfare Policy and Law

INDEX

PAGE

Interest of *Amicus Curiae* 1

Questions Presented 2

Statement of the Case 2

ARGUMENT:

I. Severance of family ties because the only remaining parent is a natural father violates equal protection 3

II. The Illinois statute unconstitutionally violates parental rights 4

III. The Illinois statute's automatic presumption that a child with a natural father has no parent is irrational and illegal 9

CONCLUSION 11

TABLE OF AUTHORITIES

Cases:

Alton v. Alton, 207 F.2d 667 (3rd Cir. 1953) 9

Armstrong v. Manzo, 380 U.S. 545 (1965) 5, 8, 11

Boddie v. Connecticut, 395 U.S. 974 (1969) 1, 8

Boyd v. United States, 116 U.S. 616 (1886) 5

Carrington v. Rash, 380 U.S. 89 7

Commonwealth v. Rozanski, 206 Pa. Super. 397, 213 A.2d 155 (1965) 6

PAGE

Crane v. Battle, 62 Misc.2d 139, 307 N.Y.S.2d 355 (Family Ct., 1970) 6

Dandridge v. Williams, 397 U.S. 471 (1970) 2

Engel v. Vitale, 370 U.S. 421 (1962) 5

Farmington v. Tokushige, 273 U.S. 284 (1927) 4-5

Garfield v. Goldsby, 211 U.S. 249 (1908) 8
Gideon v. Wainwright, 372 U.S. 335 9
Glona v. American Guarantee, 391 U.S. 72 (1968) 4, 6, 7, 8
Godinez v. Russo, 266 N.Y.S.2d 636, 49 M.S.2d 66 (1966) 6
Goldberg v. Kelly, 397 U.S. 254 (1970) 1, 8
Griswold v. Connecticut, 381 U.S. 479 (1969) 5
Guest v. United States, 383 U.S. 745 (1966) 5

Haley v. Metropolitan Life Ins. Co., 434 S.W.2d 7 (St. Louis Court of Apps. 1969) 7
Harper v. Board, 383 U.S. 663 (1966) 8
Hayes v. Strauss, 155 Va. 136, 144 S.E. 432 (1928) 6
Hernandez v. Texas, 347 U.S. 475 (1954) 3

In re Adoption of a Minor, 155 F.2d 870 (D.C. Cir., 1946) 6
In re Brennan, 134 N.W.2d 126 (Minn., 1965) 6
In re Guardianship of C., 237 A.2d 652, 98 N.J. Super. 474 (1967) 6
In re Hopes Adoption, 30 Wash.2d 185, 191 P.2d 289 (1948) 6
In re Moore's Estate, 415 P.2d 653 (1966) 6

PAGE

Jenkins v. Pye, 37 U.S. 240 (1838) 11
Jones v. Welfare Board, No. 4-68 Civ. 248 (D. Minn., July 30, 1968) 7

King v. Smith, 392 U.S. 309 (1968) 1, 7, 8, 9

Labine v. Vincent (O.T. 1970, No. 5257) 2
Levy v. Louisiana, 391 U.S. 68 (1968) 6, 7, 10

May v. Anderson, 345 U.S. 528 (1953) 5
McLaughlin v. Florida, 379 U.S. 184 ..... 7, 10
Metropolitan Life Insurance v. Thompson, 367 F.2d 791 (3rd Cir., 1966) 6
Meyer v. Nebraska, 262 U.S. 390 (1922) 4
Morey v. Doud, 354 U.S. 457 7
Munn v. Munn, —— Colo. ——, 450 P.2d 68 (1969) 7

Ojeda et al. v. Hackney, Civ. 7-515 (U.S.D.C. ND Texas, Sept. 4, 1970, —— F. Supp. —— 10
Oyama v. California, 323 U.S. 623 (1948) 7

People v. Ewer, 141 N.Y. 129 (1894) 5
People v. Meredith, 69 N.Y.S.2d 462, aff'd 297 N.Y. 692, 77 N.E.2d 8 (1947) 6
Pierce v. Society of Sisters, 268 U.S. 510 (1925) 4
Prince v. Massachusetts, 321 U.S. 158 (1944) 4

Reynolds v. Cochran, 365 U.S. 525 (1961) 9
Rosado v. Wyman, 397 U.S. 397 (1970) 1
R v. R, 431 S.W.2d 152 (Mo. 1968) 7

Sanks v. Georgia, 395 U.S. 974 (1969) 2
Schmoll v. Creecy, A-135 (Sup. Ct. N.J., June 26, 1969) 7

PAGE

Shapiro v. Thompson, 394 U.S. 618 (1969) 1, 5
Shelton v. Tucker, 364 U.S. 479 (1960) 9
Simmons v. Housing Authority of West Haven, 399 U.S. 510 (1970) 1
Slochower v. Board of Education, 350 U.S. 551 (1955) .. 9
Sniadach v. Family Finance, 395 U.S. 337 (1969) 8
Solmon v. Shapiro, 300 F. Supp. 409 (D.C. Conn. 1969), aff'd, 396 U.S. 5 (1969) 9
Speiser v. Randall, 357 U.S. 513 (1958) 9

Tot v. U. S., 319 U.S. 463 (1943) 9

United States v. Carolene Products Co., 304 U.S. 144 (1938) 7

Wade v. State, 39 Wash. 2744, 238 P.2d 914 (1951) ... 6
West Virginia Board of Education v. Barnette, 319 U.S. 624 (1942) 4
Western & A. R. Co. v. Henderson, 279 U.S. 639 (1929) .. 9
Wheeler v. Montgomery, 397 U.S. 280 (1970) 2
Wyman v. James, 397 U.S. 904 (1970) 1

Yick Wo v. Hopkins, 118 U.S. 356 (1886) 8

State Statutes:

ARK. STAT., Section 56-106(c) (1947) 6
IND. ANN. STAT., Section 3-120 (1946) 6
N.D. CENT. CODE, Section 14-11-10 (1959) 6

Other Authorities:

Bowlby, *Maternal Care and Mental Health* (1952) 5
Comment, 67 Columbia L. Rev. 984 (1967) 6

PAGE

Foder, "Emotional Trauma Resulting From Illegitimate Birth," 54 ARCHIVES OF NEUROLOGY AND PSYCHIATRY 381 (1945) 4, 5

Gray and Rudovsky, "The Court Acknowledges the Illegitimate," 118 U. Pa. L. Rev. (1969) 6

Kahn, "Child Welfare; Trends and Directions," 41 Child Welfare 459 (1962) 5

Kestenberg, "Separation from Parents," J. NERVOUS CHILD, 20 (1943) 5

N.Y. DOMESTIC RELATIONS LAW, Section 111(3) 6

N.Y. SOCIAL SERVICES LAW, Section 392 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5750

PETER STANLEY, SR.,

Appellant,

—v.—

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF OF CENTER ON SOCIAL WELFARE POLICY AND LAW, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The Columbia Center on Social Welfare Policy and Law is funded by the Office of Economic Opportunity, and is associated with the Columbia University School of Law. The Center provides assistance in research and litigation for legal services and other attorneys serving the poor.

The Center has appeared before this Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970); *Rosado* v. *Wyman*, 397 U.S. 397 (1970) and *Wyman* v. *James*, 397 U.S. 904 (1970), and has submitted briefs *amicus curiae* in *King* v. *Smith*, 392 U.S. 309 (1968); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *Simmons* v. *Housing Authority of West Haven*, 399 U.S. 510 (1970); *Boddie* v. *Connecticut*, 395 U.S. 974 (1969);

Sanks v. *Georgia*, 395 U.S. 974 (1969); *Wheeler* v. *Montgomery*, 397 U.S. 280 (1970); *Dandridge* v. *Williams*, 397 U.S. 471 (1970), and *Labine* v. *Vincent* (O.T. 1970, No. 5257).

Approximately one-third of the poor are illegitimate and subject to the many social and legal disabilities attendant on this status. This case challenges the constitutionality of a state law which denies parental rights to the father of an illegitimate child, regardless of his fitness to act as a father. The Center has a continuing concern with questions such as are involved here, since the ruling in this case will have a substantial impact on large numbers of poor children and their families.

All parties have consented to the filing of this *amicus* brief.

Questions Presented

1. Does the denial to the natural father of the right to custody of his child, based only on his failure to marry the mother of his child before her death, violate equal protection and infringe upon constitutionally protected parental rights?

2. Does the irrebuttable presumption that a child with only a natural father surviving has no parent with any rights violate due process?

Statement of the Case

The case is stated adequately in the Petitioner's brief.

ARGUMENT

I.

Severance of family ties because the only remaining parent is a natural father violates equal protection.

To define precisely the classes present in this case is to demonstrate the utterly irrational classification the Illinois statute presents. First, there are two broad categories—parents who are married to the other parent and those who are not. These two categories are further subdivided into men and women. Illinois seizes one of the four sub-categories: men who are not married and are parents. It then imposes additional questions: (1) Is there a subsequent marriage with adoption or visitation? (2) Is there any adoption at all? If the answer to these questions is "no," the statute severs family ties and takes away the child from the parent. Such action based on such a classification defies logic.

"When the existence of a distinct class is demonstrated and it is further shown that the laws, as written or as applied, single out this class for different treatment, not based on some reasonable justification, the guarantees of the Constitution have been violated." *Hernandez* v. *Texas*, 347 U.S. 475, 478 (1954). The distinct class here is singled out and faced with the forbidden irrational treatment.

It should be noted that this denial of equal protection also extends to the illegitimate child. Illegitimate children are denied a father's love in cases where legitimate children would not suffer a similar deprivation despite the fact that the illegitimate child may have greater need for a paternal

relationship. See Foder, "Emotional Trauma Resulting From Illegitimate Birth," 54 Archives of Neurology and Psychiatry 381 (1945). This is particularly egregious when the father, as here, is without a doubt the father and has so acted for many years.[1]

There is no reason to belabor the point. Authorities for striking down irrational classifications are numerous and are cited in petitioner's brief. Any examination of the classification reveals its irrationality.

II.

The Illinois statute unconstitutionally violates parental rights.

The Illinois statute arbitrarily denies petitioner the basic right of a father to raise his children solely because he had not married the mother of his children in the 16 years they lived together and raised the children before her death. He is thereby denied the fundamental right to a family relationship with his children, a right which the Supreme Court has long recognized and guarded. See *Meyer* v. *Nebraska,* 262 U.S. 390, 399 (1922). As this Court noted in *Prince* v. *Massachusetts,* 321 U.S. 158, 166 (1944): "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." See also *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925); *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624 (1942); *Farmington*

[1] The classification might have some relevance to asking for simple presentation of proof of paternity but that is not present in this case. Also see *Glona* v. *American Guarantee,* 391 U.S. 72 at 76 (1968).

v. *Tokushige,* 273 U.S. 284 (1927); *Engel* v. *Vitale,* 370 U.S. 421 (1962); *People* v. *Ewer,* 141 N.Y. 129 (1894). These custodial rights are "far more precious . . . than property rights." *May* v. *Anderson,* 345 U.S. 528, 533 (1953).

The Constitutional right to a family relationship arises from a reading of the requirements of the Bill of Rights together with related principles. In this respect it is similar to the right to travel (see *Guest* v. *United States,* 383 U.S. 745 (1966); *Shapiro* v. *Thompson,* 394 U.S. 618 (1969)), and the right to privacy (see *Griswold* v. *Connecticut,* 381 U.S. 479 (1969); *Boyd* v. *United States,* 116 U.S. 616 (1886):

> "[T]here is a 'realm of family life which the state cannot enter' without substantial justification." *Griswold* v. *Connecticut, supra,* at 503. (White, *J.,* concurring.)

When the state's entry into the protected realm consists of permanent destruction of the family unit, its justification must be very substantial indeed. *Armstrong* v. *Manzo,* 380 U.S. 545 (1965), is a case almost directly on point. This Court recognized the father's rights even against the married mother seeking to cement her new family unit by adoption. This Court held that a full-fledged hearing with due process must precede such severance.

The state's action also violently interferes with the child's right and need to be with his actual parent.[2] "To

---

[2] Kestenberg "Separation from Parents," J. NERVOUS CHILD, 20 (1943); Fodor, Emotional Trauma Resulting from Illegitimate Birth, 54 ARCHIVES OF NEUROLOGY AND PSYCHIATRY, 381 (1945); J. Bowlby, *Maternal Care and Mental Health* (1952); Kahn "Child Welfare; Trends and Directions," 41 Child Welfare 459 (1962).

the illegitimate child, the father is never putative." *Commonwealth* v. *Rozanski,* 206 Pa. Super. 397, 402, 213 A.2d 155, 151 (1965). This paramount factor has been recognized by an increasing number of courts who realize that the "best interests of the child" in many cases will lie with his natural father.[3] These children have just lost their mother. Illinois now wants to compound their tragedy by making them lose their father. The children are being punished for their status of illegitimacy. This Illinois cannot do. See *Glona* v. *American Guarantee,* 391 U.S. 73 (1968); *Levy* v. *Louisiana,* 391 U.S. 68 (1968). See Gray and Rudovsky, The Court Acknowledges the Illegitimate, 118 U. Pa. L. Rev. (1969); Comment, 67 Columbia L. Rev. 984 (1967); *Metropolitan Life Insurance* v. *Thompson,* 367 F.2d 791 (3rd Cir., 1966).

---

[3] Many courts have held that the natural father has a right to custody of his child, *People* v. *Meredith,* 69 N.Y.S.2d 462, aff'd 297 N.Y. 692, 77 N.E.2d 8 (1947); *Wade* v. *State,* 39 Wash. 2744, 238 P.2d 914 (1951); *Hayes* v. *Strauss,* 155 Va. 136, 144 S.E. 432 (1928); *In re Guardianship of C.,* 237 A.2d 652, 98 N.J. Super. 474 (1967); *In re Moore's Estate,* 415 P.2d 653 (1966); *In re Brennan,* 134 N.W.2d 126 (Minn., 1965); *Godinez* v. *Russo,* 266 N.Y.S.2d 636, 49 M.S.2d 66 (1966). Cases where the past statutory practice was that the father's consent is not necessary before placing an illegitimate child for adoption (*e.g.,* N.Y. DOMESTIC RELATIONS LAW Section 111(3) now cf. Section 392 of N.Y. SOCIAL SERVICES Law) have been modified by many states when the mother dies after consenting. In a number of instances, courts have held that the natural father has the right to revoke the consent. *In re Adoption of a Minor,* 155 F.2d 870 (D.C. Cir., 1946); *In re Hopes Adoption,* 30 Wash.2d 185, 191 P.2d 289 (1948). A number of state legislatures have also recognized this right, *e.g.,* ARK. STAT. Section 56-106(c) (1947); IND. ANN. STAT. 3-120 (1946); N.D. CENT. CODE Section 14-11-10 (1959). Also, it is now generally accepted that the natural father of an illegitimate child has reasonable rights of visitation, *Commonwealth* v. *Rozanski,* 206 Pa. Super. 397, 213 A.2d 155 (1965). And recently, it has been held that a putative father may sue to establish his paternity. *Crane* v. *Battle,* 62 Misc.2d 139, 307 N.Y.S.2d 355 (Family Ct., 1970).

Statutory classifications must be justified by a rational relationship to a legitimate state purpose. See, *e.g.*, *Carrington* v. *Rash*, 380 U.S. 89. "While this Court has applied the test of rationality with some lenience in the area of economic legislation, see, *e.g.*, *Morey* v. *Doud*, 354 U.S. 457, the Court has been "extremely sensitive when it comes to basic civil rights." *Levy* v. *Louisiana, supra*, at 70.

In addition, the Supreme Court has long held that classifications involving race or ancestry are highly suspect and may only be used if there "clearly appears . . . some overriding statutory purpose." *McLaughlin* v. *Florida*, 379 U.S. 184, 192. See also *Oyama* v. *California*, 323 U.S. 623 (1948). Discriminations based on status of birth are closely analogous to those based on race or ancestry because they disadvantage members of a minority group subject to substantial private discrimination, *cf. United States* v. *Carolene Products Co.*, 304 U.S. 144, 152-53, n. 4 (1938), and because, at least for the child, they are beyond the control of the individual. *Levy* v. *Louisiana, supra; King* v. *Smith*, 392 U.S. 309 (1968).

This Court recently applied the requirement of rationality to strike down discriminations against both illegitimate children and their mothers in *Levy* v. *Louisiana, supra*, and *Glona* v. *American Guarantee & Liability Ins. Co., supra*.[4] There is no more justification for the discrimi-

[4] While the *Levy* and *Glona* decisions dealt with the maternal relationship, a number of subsequent cases have applied the underlying principle to the relationship between illegitimate children and their fathers. See *Schmoll* v. *Creecy*, 54 N.J. 194, 254 A.2d 525 (1969); *Jones* v. *Welfare Board*, No. 4-68 Civ. 248 (D. Minn., temporary restraining order filed July 30, 1968); *Munn* v. *Munn*, —— Colo. ——, 450 P.2d 68 (1969); *R* v. *R*, 431 S.W.2d 152 (Mo. 1968); *Haley* v. *Metropolitan Life Ins. Co.*, 434 S.W.2d 7 (St. Louis Court of Apps. 1969); *In re Estate of Jensen*, 162 N.W.2d 861 (N.D. 1968).

nation practiced here, in which basic family rights are denied the father and children, based on the father's sex and his marital status. In *Glona, supra,* this Court specifically rejected the claim that discrimination against illegitimate mothers would deter the "sin" which leads to illegitimacy. 391 U.S. at 75. See, in general, *King* v. *Smith, supra.* A legislative intent to deter would even be less reasonable here.

The Illinois statute cannot be justified as a device to encourage marriage and the legitimization of children, since there is no way to marry a dead person. No more rational is the suggestion by Illinois that denying the natural father custody rights is permissible as a means of encouraging the natural father to adopt the child.[5] To deny the natural father custody of a child in order to encourage him to go through difficult procedures to get custody is Constitutionally impermissible. First, it deprives the parent of the child without a prior hearing. See *Goldberg* v. *Kelly,* 397 U.S. 254 (1970); *Sniadach* v. *Family Finance,* 395 U.S. 337 (1969). Second, it shifts the burden of proof to the father to prove fitness rather than requiring the state to prove unfitness as the justification for severing family ties. *Armstrong* v. *Manzo, supra. Garfield* v. *Goldsby,* 211 U.S. 249 (1908) held that you could not make a man shoulder the burden of going to Court to get his citizenship. Putting the burden of proving fitness on the father is equally impermissible. Such a process particularly penalizes the poor. *Cf. Boddie* v. *Connecticut,* —— U.S. —— (1971); *Harper* v. *Board,* 383 U.S. 663 (1966); *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886). Even if the

[5] Nor is adoption proceeding a way to find proof of paternity. It merely measures interest of a sort, at best.

parent knew of the availability of adoption he would need counsel and counsel is not automatically provided when courts sever parental ties. See *Gideon* v. *Wainwright,* 372 U.S. 335; *Reynolds* v. *Cochran,* 365 U.S. 525 (1961), at 532-3. While encouraging adoption may be a legitimate government purpose, that purpose cannot be pursued by means that broadly infringe upon basic rights, when there are available less drastic means for achieving the same ends. *Shelton* v. *Tucker,* 364 U.S. 479 (1960).

III.

The Illinois statutes automatic presumption that a child with a natural father has no parent is irrational and illegal.

The effect of the Illinois statutory sections read together is to create an irrebuttable presumption which is irrational: From the fact that the father of the child did not marry the mother before the mother's death, it is conclusively presumed that the child is dependent "without a parent, guardian, or legal custodian," and that a Court must put the child in the care and custody of a person whom it deems "a fit" custodian. This application of an invalid presumption constitutes a denial of due process.

An irrational presumption cannot meet due process requirements. *Tot* v. *U. S.,* 319 U.S. 463 (1943); *Western & A. R. Co.* v. *Henderson,* 279 U.S. 639 (1929); *Alton* v. *Alton,* 207 F.2d 667 (3rd Cir. 1953); *Leary* v. *U. S.,* 395 U.S. 6 (1969). This requirement applies to civil cases. *Speiser* v. *Randall,* 357 U.S. 513 (1958); *Solmon* v. *Shapiro,* 300 F. Supp. 409 (D.C. Conn. 1969), aff'd, 396 U.S. 5 (1969); *Slochower* v. *Board of Education,* 350 U.S. 551 (1955); *Smith* v. *King, supra.*

In a case involving the conclusive presumption of support contributions from a non-adopting step-father, a Federal District Court held:

> ". . . I consider that (the presumption) violates plaintiffs' rights under the Due Process clause of the Fourteenth Amendment. The mere fact that there is a step-father living with the family causes Defendant to terminate benefits to children otherwise eligible. There is no consideration of the needs of the child nor is there a determination of the actual availability of the income . . .". *Ojeda et al.* v. *Hackney,* Civ. 7-515 (U.S.D.C. ND Texas, Sept. 4, 1970, —— F. Supp. ——.

In the case at bar, petitioner cared for and raised his child for all but a brief period. He lived with the child's mother many years. It is now impossible to marry the mother. Yet the Illinois statute forbids a Court to evaluate any of these factors. From the failure to marry is inferred the dependency, *i.e.,* is inferred the unfitness of the father. And the effect is to deprive the child of its natural father. "Why should the illegitimate child be denied rights merely because of his birth out of wedlock?" *Levy* v. *Louisiana,* 391 U.S. 68 (1968), at 71.

Nor does the public policy of encouraging parents to marry or to discourage illicit sexual practices in any way justify this irrational presumption. This Court has explicitly rejected the notion that ". . . since the legislature is dealing with 'sin', it can deal with it selectively and is not compelled to adopt comprehensive or even consistent measures." *McLaughlin* v. *Florida,* 379 U.S. 184, 191.

Like the presumption of fraud in conveyances to a parent, the presumption of a father's unfitness assumes "a

principle at war with all filial as well as parental duty and affection." *Jenkins* v. *Pye,* 37 U.S. 240, 253 (1838). "Whereas the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of the interest of the child was the object in view." *Id.*

Armstrong v. *Manzo, supra,* held that you could not presume a man did not care for his children and have them adopted away—here the state presumes the man cannot care for the children and severs the relationship without a hearing. The presumption against parents such as the appellant in this case is unconstitutional.

CONCLUSION

For the reasons stated above, the decision of the court below should be reversed.

Respectfully submitted,

JONATHAN WEISS
E. JUDSON JENNINGS
TOBY GOLICK
Center on Social Welfare
Policy and Law
401 West 117th Street
New York, New York 10027